SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JUL 21 2016
ARTHUR JOHNSTON
BY ______ DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

LANDON MARTINEZ, PLAINTIFF

3:16cv575 CWR-LRA

v.

CORRECTIONS CORPORATION OF AMERICA, INC. & ITS BOARD OF DIRECTORS FOR CORRECTIONS CORPORATION OF AMERICA, **INDIVIDUALLY;**
FRED FIGUEROA, WARDEN, **IN HIS INDIVIDUAL CAPACITY;**
PERSONS WHOSE IDENTITIES HAVE BEEN ASCERTAINED AS: INSTRUCTOR LINZY; PRINCIPAL TAYLOR, S. RAMIZ, S. GURLEY, M. THOMAS, C. STEWART, DELCID, S. ORONOZ, VAZQUEZ, P. SMITH, BURNSIDE, GRANT, TAYLOR, K. LITTLE, C/O SHORT, S.E. BRADY, B. SCALLION, W. LEAVY, D. AUSTIN, **IN THEIR INDIVIDUAL CAPACITIES, AS PERSONS EMPLOYED BY CORRECTIONS CORPORATION OF AMERICA, OR ANOTHER TO WHICH PLAINTIFF IS IGNORANT TO THE IDENTITY OF THEIR EMPLOYER.**
JOHN AND/OR JANE DOES 1-100 &
JOHN AND/OR JANE DOE CORPORATION 1-100, **INDIVIDUALLY**

DEFENDANTS

COMPLAINT FOR DAMAGES & OTHER RELIEF

Jury Trial Demanded

NATURE OF THE ACTION

Plaintiff brings this action against Defendants for actions taken under the color of law; this civil action arises out of an incident where an instructor at a private prison facility struck Plaintiff in the back of the head with a thick computer book causing injury. Notwithstanding, the attack was unprovoked, and despite Plaintiff's attempts to proceed upon administrative remedies, Defendants have continued to stonewall, retaliate, and engage in the routine practice of denying medical care and treatment for injuries sustained. Plaintiff has exhausted administrative remedies and seeks damages from each entity and person, individually.

JURISDICTION & VENUE

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 & 1332 and

§ 1343, as well as 42 U.S.C. § 1983. Subject matter jurisdiction is appropriate in federal court since a federal question is raised pursuant to the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

2. Venue is appropriate in this Court under § 1391(b) and § 1392, as all acts and/or omissions occurred in the district and division embracing the cause of action.

PARTIES

3. Plaintiff Landon Martinez, is an adult resident citizen of the State of California. His present living arrangements place him in Norco California.

4. Defendant CCA has managed TCCF under a contract with the Mississippi Department of Corrections. Under its contract, CCA has responsibility for providing humane care and treatment consistent with all constitutional and ACA standards. Defendant CCA is a for-profit private corporation incorporated and existing in the state of Tennessee and maintaining a principal place of business at 10 Burton Hills Boulevard, Nashville, Tennessee 37215. CCA may be served through CT Corporation, its registered agent, located in Rankin County Mississippi.

5. Defendant CCA is managed by a Board of Directors, The Board of Directors has responsibility for ensuring that subordinate staff complied with ACA and Constitutional standards safety, care and treatment remains consistent with all constitutional and ACA standards. Defendant(s) in their supervisory capacity, knew or reasonably should have known that one (1) or more subordinate would conduct themselves within these standards, and failed to take action although these Defendants had authority to do so.

6. Defendant(s), whose identities have be ascertained as follows: S. Ramiz, S. Gurley, M. Thomas, C. Stewart, Delcid, S. Oronoz, Vazquez, P. Smith, Burnside, Grant, Taylor, K. Little, C/O Short, S.E. Brady, B. Scallion, W. Leavy, D. Austin, were at all times employed by one or more Defendant(s), and were on duty at the date and time of the incident which gives rise to the subject

matter. Each of these Defendants is directly and proximately responsible for the occurrences herein alleged, and the Plaintiff's harm and damages were caused by the Defendant. Defendant was at all times acting under the color of law with the permission or consent of one (1) or more Defendant within the scope and course of employment. Each Defendant may be served with process at their place of employment or residence.

7. Defendant Linzy, was at all times employed by one or Defendant(s), and was on duty at the date and time of the incident which gives rise to the subject matter. Linzy is directly and proximately responsible for the occurrences herein alleged, and the Plaintiff's harm and damages were caused by the Defendant's conduct. Defendant Linzy was at all times acting under the color of law with the permission or consent of one (1) or more Defendant within the scope and course of employment. Defendant may be served with process at their place of employment or residence.

8. Defendant Figueroa, was at all times employed by one or more Defendant(s), and was on duty at the date and time of the incident which gives rise to the subject matter. Figeuroa is directly and proximately responsible for the occurrences herein alleged, and the Plaintiff's harm and damages were caused by the Defendant. Defendant Figueroa was at all times acting under the color of law with the permission or consent of one (1) or more Defendant within the scope and course of employment. Defendant may be served with process at their place of employment or residence.

9. The Plaintiff is ignorant as to the actual identities of John and Jane Does 1-100, individuals who are unknown TCCF/CCA officers, employees, agents, and or servants. Plaintiff will amend this Complaint to allege their true names and allege that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages, as alleged herein, were proximately caused by their conduct. Plaintiff, upon information and belief, asserts that the Doe Defendants were the officers, agents, servants, and employees of each of the other Defendants herein, and were acting with the permission and consent within the course and

scope of said agency and employment, maintaining a principal place of business at 10 Burton Hills Drive, Nashville Tennessee.

10. The Plaintiff is ignorant as to the actual identities of John and/or Jane Doe Corporations, who are unknown business, contract affiliates with TCCF/CCA officers, employees, agents, and or servants. Plaintiff, upon information and belief, asserts that the Doe Defendants were engaged in business operations with one (1) or more of the Defendants herein, and were acting with the permission and consent within the course and scope of said contract, agency and/or employment. Plaintiff will amend this Complaint to allege their true names and allege that each of the fictitiously named Doe Corporation Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages, as alleged herein, were proximately caused by their conduct.

FACTS

11. By some operational agreement, the State of California utilizes an interstate system allowing it to send persons in custody to other States. In 2014, Plaintiff became part of the California inter-state transfer system when Plaintiff was transferred to Mississippi.

12. After being transferred to the Tallahatchie County Correctional Facility, Landon Martinez enrolled in certain courses to further develop skills as to better himself to become a productive member of society.

13. Martinez enrolled in a Computer Course that was instructed by Defendant Linzy; from this class, Martinez was to garner skills in the use of operating systems, such as Microsoft, and Linux as both, in addition to others were integral parts of the curriculum.

14. On or about the 22nd day of July 2015, Plaintiff Martinez was seated in class, continuing to develop this skill-set.

15. Plaintiff alleges that, Instructor Linzy walked behind Plaintiff Martinez and struck him in the back of the head with a book that was approximately 2 inches thick. Plaintiff is unable to recall whether the book was hard-back or soft-back.

16. Shortly thereafter, Plaintiff began to suffer from dizziness, severe headaches, reaching the degree of migraines, experienced loss of memory, shortness of breath, anxiety attacks, sleep deprivation, swelling to the back of the head, throbbing pain, and additional injuries, likely resulting from the assault. Plaintiff continues to suffer from side-effects to this day.

17. Proceeding this un-provoked and unwarranted assault, Instructor Linzy laughed at and antagonized the Plaintiff, as if assaulting Plaintiff was not a serious matter.

18. For some period of time, Plaintiff's request for proper care was denied, delayed, or otherwise interfered by one (1) or more Defendant.

19. Plaintiff alleges that one (1) or more Defendant failed to properly document, record, or otherwise take note(s) of the incident, injury, as well as subsequent investigation.

20. Plaintiff further alleges denial from access to an incident report number, thereby inhibiting his access to properly receive information on the reported matter, and an impediment to providing vital information as to provide appropriate information to documenting authorities.

21. Upon reporting the matter, Plaintiff would show that the matter was swept under the rug, despite recognition of swelling and Defendant's acknowledgement of striking Plaintiff as described above by one (1) or more defendant.

22. Due to delays caused by one (1) or more Defendant, Martinez was denied and/or improperly administered care for a period yet to be fully determined and to such a degree as an individual.

23. Plaintiff maintains special dietary needs as followed by religious practice. Plaintiff holds a fundamental right to freely exercise his religion, including the ability to practice same through dietary needs.

24. Plaintiff alleges that he was subject to improper responsive action by one upon seeking redress through administrative remedies.

25. Shortly after reporting the matter, Plaintiff's dietary measures became interfered with or otherwise completely denied.

26. Plaintiff would show that he has exhausted administrative remedy proceedings as to the issues regarding his medical condition, and that none of the Defendants have denied that Plaintiff has been struck in the back of the head.

CLAIMS FOR RELIEF PURSUANT TO 42 U.S.C. § 1983

27. Plaintiff alleges, at all times herein, each Defendant were acting under the color of law, and/or pursuant to custom, or usage, of which, caused Plaintiff to be subjected the deprivation of several rights, privileges, or immunities secured by the Constitution and laws, and shall be liable to Plaintiff for the injuries sustained, at law and/or equity.

EPISODIC ACTS OR OMISSIONS

28. As demonstrated above, Defendants maintained and operated a system in such a matter as to cause the pervasive deprivation of constitutional rights in every respect and at every level. Plaintiff was forced to endure unconstitutional conditions, and endure the actions of each Defendant; as well as each Defendant acting in accordance with policies, customs, and practices, and under the color of law, exhibiting callous and deliberate denial of secured rights, privileges, and immunities, as well as depriving Plaintiff of his guaranteed rights secured by the Constitution of the United States and under federal laws.

29. These entities, as well as the individual Defendants, including actions taken pursuant to policy, practice, and customs, created and required Plaintiff to endure injuries in a manner deficient in so many respects that it was not suitable for anyone to endure. These actions and/or inactions resulted in violations of constitutional rights of the Plaintiff.

30. As will likely be further developed through discovery, Defendant(s) adopted, implemented and permitted many other policies, practices and customs that deprived Plaintiff of clearly established constitutional. These included policies, customs and practices, whether written or unwritten, that were announced, sanctioned, and or implemented by one (1) or more Defendant. These also include policies, customs and practices, which though possibly not formally adopted, had become so widespread, well settled and deeply embedded in application, use, employment and acceptance to have become the policies of one (1) or Defendants.

31. Some of the policies, customs, and practices, which constituted elements of constitutional deprivations, included, but were not limited to:

a) Denial of access to a qualified professional
b) Ignoring, delaying, or interfering with requests for treatment, records, and administrative relief
c) Refusing to accommodate and/or retaliating against Plaintiff by way of cultural difference
d) Failing to provide adequate safety provisions for Plaintiff
e) Promoting a purportedly qualified professional
f) Promoting the use of physical assault/battery against inmates, including Plaintiff, evincing extreme indignity resulting in life, liberty, and/or property deprivations
g) Routine suppression/restriction of speech by retaliation or otherwise
h) Employing, using, or otherwise promoting use of untrained professionals in the corrections industry.
i) Denial of access to legally sufficient medical care
j) Promoting the use of assault, battery, and other forms of unlawful, inappropriate or excessive physical contact with inmates

32. These policies, practices and customs set forth in the preceding paragraph, as well as others that may come to light in the course of this litigation, resulted in numerous repeated, and

pervasive deprivations of Plaintiffs rights guaranteed by the Constitution of the United States, at the hands of the Defendant(s).

33. Each of these policies were implemented, approved ratified, known and/or constructively known by each Defendant during the course of litigation.

34. Each of the foregoing policies, customs and practices constituted elements of the conditions of Plaintiff's constitutional deprivations, and both individually and in combination constituted a moving force in the deprivation of Plaintiff's rights including those secured under the Constitution of the United States of America and/or the laws thereof.

35. From these Defendants, jointly and severally, Plaintiff seeks recovery of all compensatory damages to which he is entitled as a result of these constitutional violations, and the damages suffered therefrom. Plaintiff further seeks punitive damages from each Defendant for their conduct in callous and reckless disregard for the rights, welfare, and needs of the Plaintiffs.

CONSTITUTIONAL VIOLATIONS

36. By striking Plaintiff in the back of the head, failing to properly manage and care for a necessary medical condition, impeding with and causing interference to Plaintiff's religious practices by food contamination, Defendant(s) violated Plaintiff's clearly established constitutional rights under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments in the following respects:

a) Cruel and unusual punishment
b) Right not to be deprived of liberty without due process of law
c) Right to be safe and protected from injuries while in the care of a professional
d) Plaintiff's right to be protected by police officers while under their control
e) Plaintiff's right to be free from excessive and unreasonable force and/or unreasonable search and seizure; and,
f) Plaintiff's right to adequate and/or necessary medical treatment for a medical condition.
g) Plaintiff's right to exercise speech, and religion without retaliation

37. As a direct and foreseeable result of Defendants' actions, as stated in Para. Plaintiff suffered damage including but not limited to, physical injuries, emotional distress, mental anguish as well as pain and suffering.

38. Defendant CCA, each individual Defendant, in their individual and official capacities, through established customs, policies and practices which directly and proximately caused the deprivation of the Plaintiff's constitutional rights as alleged. Defendants were deliberately indifferent to the rights of Plaintiff and other TCCF inmates. These policies created unconstitutional conditions by:

a) inadequate and improper training, supervision and discipline of its instructors & other staff
b) condoning or allowing instructors to strike and otherwise make unlawful and inappropriate contact with TCCF inmates
c) inadequate and improper procedures and practices in screening, hiring, training, supervising and disciplining officers who practice, condone or use excessive force upon TCCF inmates, or allow employees/contractors to strike other inmates, including Plaintiff, in violation of their Constitutional Rights.
d) inadequate and improper procedures, policies and practices for investigating improper action by TCCF correctional officers and/or its contract employees through offender complaints of misconduct or through internally initiated complaints or investigations.
e) inadequate or improper procedures, policies and practices for identifying and taking appropriate action against TCCF correctional officers who are in need of training and/or re-training, corrective measure, reassignment, or other non-disciplinary actions, through a positive or early warning system designed to prevent the violation of families' rights.
f) condoning and allowing TCCF correctional officers to allow others to commit physical battery on this Plaintiff as well as other inmates.
g) failing to prevent and/or investigate allegations of improper relationships between TCCF correctional officers and others, which directly lead to the July 2015 assault against Plaintiff.

NEGLIGENT HIRING AND SUPERVISION

39. Plaintiff alleges Defendants CCA, Instructor Linzy, and Doe Defendants 1-100 negligently hired, supervised, and retained its employees inter alia, by a) failing to care for and insure the Plaintiff's safety while at TCCF; b) properly train, supervise, discipline, retain, hire, and/or discharge its employees agents and/or representatives; and, c) were otherwise negligent in their care and treatment of Plaintiff, and as a direct and proximate result, the Plaintiff sustained the harms alleged herein.

RESPONDEAT SUPERIOR

40. Defendants CCA and other unknown TCCF, CCA persons acted with negligence, gross negligence, and/or intentionally by allowing or failing to prevent the Plaintiff's battery while in computer class on. At all times relevant, each Defendant owed a duty to the Plaintiff to ensure his safety, and the Defendants breached this duty. The actions/inactions of Defendants TCCF, CCA and/or other persons in a capacity thereof lead directly to the injuries suffered by the Plaintiff. TCCF, CCA as Defendants Jon and/or Jane Does 1-100's employer is liable for their actions which were undertaken during the course and scope of their employment at CCA.

41. TCCF & CCA, as well as its individual officers is further responsible for the actions and inactions alleged herein against Defendants CCA and John and Jane Does 1-100 which caused the damages suffered by the Plaintiff. Also, such actions and/or inactions by the individual Defendants were committed within the course and scope of their employment with CCA.

DELIBERATE INDIFFERENCE

42. Plaintiffs incorporate herein Para. No.'s 1-43

43. At all times herein, one (1) or more Defendants acted with deliberate indifference to the nature of his or her actions, had knowledge of and disregarded a substantial risk of harm to one (1) or more Plaintiff's, and performed or failed to perform obligations.

PROFESSIONAL MALPRACTICE

44. Plaintiff incorporates all allegations set forth in paragraph no's 1-45.

45. Defendants TCCF, CCA, its Board, their individual Board members, and John/Jane Doe Corporations 1-100, as well as others by and through its employees, agents, or representatives, as well as Linzy, individually were negligent or grossly negligent in failing to properly manage and care for Plaintiff by professional standards

46. Each of the Defendants named herein is liable for the acts and omissions of its employees pursuant to the standards of Corrections Institutions, Health and Professions article of the

State of Mississippi, Mississippi Medical Malpractice Statute and/or through principles of master/servant or employer/employee liability, respondeat superior, or other common law or statutory impositions of vicarious liability.

47. Defendants breached their duties to Plaintiffs by failing to properly manage and care for them, despite their knowledge their individual employees was not qualified to perform the services provided. Defendant, by and through its employees, agent, and/or representatives, failed to exercise the degree of care, skill and learning expected of reasonably prudent medical facility in the State of Mississippi acting in the same or similar circumstances, and breached the applicable standard of care. These Defendants committed professional malpractice by failing to properly manage Plaintiff's situation. This professional malpractice directly and proximately resulted in the harms and damages alleged herein.

DECLARATORY JUDGMENT & EQUITABLE RELIEF

48. Pursuant to R.57 Plaintiff requests this Court to declare that policies, practices, rules and customs complained of in this Complaint are unlawful in that they violate the Constitutional rights of citizens.

49. Further, Plaintiff requests this Honorable Court to enter its Order to permanently enjoin the Defendants and their agents, officers and employees from engaging in all practices found by this Court to be in violation of the Constitution of the United States of America, and Order that Defendant's adopt and implement a comprehensive system to safeguard against constitutional violations and illegal conduct, including implementation of a system designed to prevent against the future occurrence of such acts as complained of herein, and to protect citizens from like constitutional violations in the future, and to require Defendants to submit a plan to this Court outlining the steps it will take to prevent such future conduct and to comply with the Orders of this Court.

PUNITIVE PUNISHMENT

50. Defendant(s) named above, and as may be identified in their individual capacities, acted in complete disregard for the safety of Plaintiff by acting in a negligent and/or grossly negligent manner as previously described herein. The actions of these Defendants warrant punitive damages.

51. The Defendants' actions identified in para. 11-51 exhibited gross negligence and direct disregard of the safety of the Plaintiff. Punitive damages should be awarded against the Defendants. Defendants tortious conduct caused these injuries complained-of, and therefore, Plaintiff's emotional stress and mental anguish.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, individually and collectively demand a jury trial of this cause, the Court will award all relief due Plaintiff as set forth herein, including but not limited to:

A. Declare that the practices, policies, rules and customs complained of in this Complaint are unlawful in that they violate the constitutional rights of citizens;

B. Permanently enjoin Defendants and their agents, officers and employees from engaging in all practices found by this Court to be in violation of the Constitution of the United States of America, and Order that it adopt and implement a plan to prevent against the future occurrence of such acts complained of herein, and to protect citizens from like Constitutional violations in the future, and to require Defendants to submit a plan to this Court outlining the steps it will take to prevent such future conduct and to comply with the Orders of this Court;

C. Order that the Defendants pay Plaintiff a sum in excess of $ 75,000.01 as compensatory damages arising from the aforesaid misconduct of Defendants as forth herein, and enter judgment against Defendants and in favor of Plaintiff in the amount of $or in such amount as found due and owing by the jury and/or this Court.

D. Order that the Defendants pay to Plaintiff a sum in punitive damages sufficient to deter these Defendants and others similarly situated from like conduct in the future.;

E. Retain jurisdiction over this action to ensure full compliance with the Court's Orders and require the Defendants to file such reports as the Court deems necessary to evaluate such compliance.

F. Order Defendants to pay Plaintiffs costs and expenses, including expert witness fees and reasonable attorney's fees, and prejudgment interest on all amounts found due and owing, including, but not limited to, those attorney's fees found properly rewardable pursuant to 42 U.S.C. § 1983; and,

G. Grant such other and further relief, of either an equitable or legal nature, to the Plaintiff as the Court deems just and proper.

THIS, 21st, DAY OF July, 2016.

RESPECTFULLY SUBMITTED,
LANDON MARTINEZ

By: [signature]
ERICH G. JERSCHEID

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